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STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (SINGRAM), S/WCI
(MSTAMILIO, MSHIN), L/PM (EPELOFSKY)
NSC FOR AHARRIMAN
OSD FOR ARICCI
CENTCOM FOR CG CJTF-82, POLAD, CSTC-A, SOUTHCOM, JTF-GTMO

E.O. 12958: DECL: 05/10/2017
TAGS: [KAWC](#) [MARR](#) [PTER](#) [PGOV](#) [PINS](#) [PREL](#) [AF](#)
SUBJECT: DETAINEE LEGAL FRAMEWORK: REVIEW BOARD ON PLANNED
PROSECUTION OF FIRST 12 TRANSFERRED DETAINEES

REF: A. KABUL 01558
[1](#)B. KABUL 01220
[1](#)C. 05 KABUL 10191

Classified By: Political-Military Affairs Counselor Carol A. Rodley; re
asons 1.4(b) and (d)

[1](#)1. (S/NF) Summary: The Afghan Detainee Review Board (DRB) convened for its third regular session on May 8. The GOA advised that they plan to file charges next week against 10 of the first 12 detainees who were transferred from Bagram Theater Internment Facility (BTIF) to the Afghan National Detention Facility (ANDF) on April 2. Though the GOA is still working out procedures for investigating and prosecuting detainees transferred to the ANDF, this latest DRB meeting reinforced our view that the GOA has the intent and emerging capability to prosecute those cases that GOA representatives previously identified as eligible for prosecution. Post sees grounds for optimism about GOA's ability to handle a second transfer. Post will continue to work with the Office of the National Security Council (ONSC) and Washington to obtain assurances that the GOA will conduct security detention for detainees (reftel A), including those for whom they need more time to build a case. End Summary.

Charges To Be Filed Next Week

[1](#)2. (S/NF) The Afghan Detainee Review Board (DRB) convened for its third regular session on May 8. Attendees are listed in paragraph 8. The GOA advised that they plan to file charges next week against 10 of the first 12 detainees who were transferred from Bagram Theater Internment Facility (BTIF) to the Afghan National Detention Facility (ANDF) on April 2. (Comment: Per reftel B, April 8 is considered the operative date of transfer because it is the date the Office of the National Security Council (ONSC) notified all DRB representatives of the transfer. End Comment). The GOA plans to request a two-week extension beyond the 30-day pretrial detention period to file charges for the remaining two detainees now in ANDF, and the DRB advised that they have reached a mutual understanding that the deadline for filing charges for these cases can be extended. The DRB will share

the charge sheets with US DRB attendees.

Investigative 'Blocks'

¶3. (S/Rel to GOA) National Directorate of Security (NDS) Legal Adviser Rasoli advised of several 'blocks' impeding smooth investigation of cases of detainees at ANDF. Some, such as the Palace coordination necessary to ensure MOD would let NDS investigators into the facility, have been resolved, but the 12 NDS investigators currently commuting from Kabul daily to work at ANDF now have an effective working day of less than three hours due to procedural and logistical issues. Rasoli also stated that the investigators feel that the cell bars and physical distance at which they are positioned from detainees at ANDF prevent them from building rapport with detainees and gaining their trust. (Begin CJTF-82 Comment: During the GOA's interviews at Bagram, NDS and other GOA investigators sat across a table from detainees in a room outside the BTIF itself. End comment)

¶4. (S/Rel to GOA) Extensive DRB discussion netted the following suggestions: Ensure detainees are in place to meet with investigators at a specified time, not moved from their cells after the investigators' arrival; transfer detainees to an NDS facility during the NDS investigative period; and build a facility to house investigators (and possibly their families) at ANDF so they can remain there the entire workweek. DRB members expressed concerns for the safety of NDS investigators, who currently travel together in one vehicle every day. Polmiloff advised that we would communicate the DRB's concerns to CSTC-A Detainee Operations and ANDF commander Brigadier General Safiullah. The ONSC

plans to arrange for BG Safiullah to meet with DRB representatives to discuss their concerns.

¶5. (S/Rel to GOA) Rasoli advised he felt the 12 cases had not yet been developed as thoroughly as they could be since there had not yet been time to discover if there were accessories to alleged crimes. In their interviews with detainees, NDS investigators focus on obtaining statements, identifying witnesses, and ascertaining whether others are accessories. Rasoli also clarified that ahead of the detainees' physical transfer, NDS had sent faxes out to provinces to gather information, a task complicated by some detainees' use of false names.

Use of Photographs in Lieu of Physical Evidence

¶6. (S/Rel to GOA) In response to members' query at the last DRB on whether physical evidence obtained by coalition forces would be made available along with written case files, polmiloff, based on consultation with CJTF-82, advised that the evidence seen in case file photographs was captured in combat conditions when the detainees were picked up as enemy combatants--not during law enforcement operations when evidence would normally be gathered with the intent to prosecute. The physical evidence was destroyed after it was photographed to ensure it was not used against GOA or coalition forces. Rasoli advised that the courts will ask for physical evidence. MOJ General Director of Prisons General Abdulsalim Asmat, a former senior judge, clarified that Afghan courts consider four types of evidence: confessions, witness statements, physical evidence, and statements by the defendant. After extensive discussion, DRB members confirmed it is not necessary for all four types of evidence to be present. Justice Barakzai said that if it is clearly stated why only photographs of physical evidence are available, the photographs should be considered acceptable evidence in court. (Comment: We believe, however, that judges involved in detainee cases should be briefed on this issue. End Comment)

Comment

17. (S/NF) Though the GOA is still working on the details of its procedures for investigating and prosecuting detainees transferred to the ANDF, this latest DRB meeting reinforced our view that the GOA has the intent and emerging capability to prosecute those cases that GOA representatives who conducted interviews at BTIF previously identified as eligible for prosecution. Post sees grounds for optimism about GOA's ability to handle a second transfer. We will follow up with the ONSC to confirm that charges are indeed filed in at least 10 of the 12 cases next week, as the NDS prosecutor had indicated would be done. Post will continue to work with the ONSC and Washington to obtain assurances that the GOA will conduct security detention for detainees (reftel A), including those for whom they need more time to build a case.

18. (S/Rel to GOA) GOA Attendees:

Director of Policy and Oversight, ONSC, Malik Quraishi
Director, External Affairs, ONSC, Mr. Sayeed Najeeb Tahmas

Supreme Court Justice Mohammed Barakzai (substituting for Justice Rashid)
Deputy Attorney General Shinwari
NDS Legal Advisor Rasoli
MOD Legal Advisor General Mohammed Yousef Nooristani
MOD Legal Affairs Department Mr. Abdul Qayoum Nezami
MOJ General Director of Prisons General Abdulsalim Asmat
(Absent: MOI Deputy Director of Intelligence General Jamaluddin)

US Attendees:
CSTC-A's Chief of Operational Law

Deputy polmilcouns and polmiloff
Embassy interpreter
WOOD